

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBIN S. MARTIN,) No. C 07-5207 JSW (PR)
Petitioner,)
vs.)
ROBERT HOREL, Warden,) **ORDER OF DISMISSAL**
Respondent.)
_____))

INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at Pelican Bay State Prison, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging his continued confinement in prison beyond the expiration of his sentence. Plaintiff filed an amended petition on October 26, 2007, which supercedes the original petition. This order directs Respondent to show cause why the amended petition should not be granted.

BACKGROUND

According to the amended petition, Petitioner was convicted in Los Angeles County Superior Court of attempted robbery of a peace officer, and sentenced on August January 20, 1997, to a term of 11 years in state prison. No parole term was imposed at that time. His sentence expired on September 18, 2007. On July 6, 2007, Petitioner's release on parole was revoked because he refused to sign parole papers.

DISCUSSION

I Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person

1 in custody pursuant to the judgment of a State court only on the ground that he is in
 2 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
 3 § 2254(a).

4 It shall “award the writ or issue an order directing the respondent to show cause
 5 why the writ should not be granted, unless it appears from the application that the applicant
 6 or person detained is not entitled thereto.” *Id.* § 2243.

7 II Legal Claims

8 The petition raises the following ground for relief: (1) the imposition of a parole
 9 term by the California parole board violates his right to due process; (2) the imposition of
 10 a parole term violates a state created liberty interest protected by due process; and (3) the
 11 imposition of a parole term violates the Ex Post Facto Clause of the constitution.

12 Liberally construed, it does not appear from the face of the petition that Petitioner is not
 13 entitled to relief on his claims.

14 III. Exhaustion

15 A prisoner in state custody who wishes to challenge either the fact or length of his
 16 confinement by filing a federal petition for writ of habeas corpus must first exhaust state
 17 judicial remedies, either on direct appeal or through collateral proceedings, by presenting
 18 the highest state court available with a fair opportunity to rule on the merits of each and
 19 every issue he seeks to raise in federal court. *See* 28 U.S.C. § 2254(b),(c); *Granberry v.*
Greer, 481 U.S. 129, 133-34 (1987).

21 Petitioner states that he attempted to exhaust the claims in the instant petition by
 22 raising them in administrative appeals to the California Board of Prison Terms and the
 23 Director of the California Department of Corrections.¹ Such efforts do not satisfy the

25 ¹The Court further notes that Petitioner signed the original
 26 petition on August 13, 2007, before the alleged expiration of his
 27 sentence, and only several weeks after the July 6, 2007 decision
 28 by the Board to revoke his release on parole. Under these
 circumstances, Petitioner did not have sufficient time to fairly

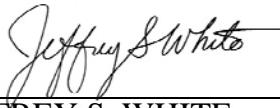
1 exhaustion requirement for federal habeas corpus petitions; Petitioner must present each
2 and every claim he wishes to raise herein to the highest state court before it may be
3 considered by the federal court. As Petitioner has not presented any of his claims to the
4 highest state court, he has not exhausted his state court remedies. As such, the petition
5 must be dismissed. *See Rose v. Lundy*, 455 U.S. 509, 510 (1982), *Raspberry v. Garcia*,
6 448 F.3d 1150, 1154 (9th Cir. 2006) (declining to extend the rule in *Rhines v. Webber*, 125
7 S. Ct. 1528, 1535 (2005) to completely unexhausted petitions and finding that the district
8 court must dismiss such a petition based on *Jimenez v. Rice*, 276 F.3d 478, 481 (9th Cir.
9 2001)). A dismissal solely for failure to exhaust is not a bar to Petitioner's returning to
10 federal court after exhausting available state remedies. *See Trimble v. City of Santa Rosa*,
11 49 F.3d 583, 586 (9th Cir. 1995).

12 **CONCLUSION**

13 For the foregoing reasons, this petition is DISMISSED without prejudice to
14 Petitioner's filing a new federal habeas petition once he has exhausted state remedies by
15 presenting his claims to the highest state court. The Clerk shall enter judgment and close
16 the file.

17 IT IS SO ORDERED.

18 DATED: April 1, 2008


19 JEFFREY S. WHITE
20 United States District Judge

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27 present his claims to the highest state court before filing the
instant petition.